

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of HELEN CABRERA and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Richmond, VA

*Docket No. 00-1298; Submitted on the Record;  
Issued April 10, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof in establishing that she developed a right shoulder condition in the performance of duty.

On March 18, 1998 appellant, then a 43-year-old tax examiner, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that her right shoulder condition was employment related. She stated that she first became aware of her right shoulder condition on March 10, 1997, while performing repetitive activities required by her job and adjusting to a new workstation.

Accompanying appellant's claim were medical progress notes from March 31, 1997 to March 17, 1998 from Dr. Troy H. Smith, a Board-certified orthopedic surgeon; a magnetic resonance imaging (MRI) scan dated March 10, 1998; a narrative statement dated May 8, 1998; a work report prepared by Dr. Smith dated May 12, 1998 and a position description. The progress notes from Dr. Smith documented appellant's complaints of right shoulder pain beginning in March 1997 with a diagnosis of tendinitis of the right shoulder with possible impingement syndrome. The MRI scan of the right shoulder revealed calcified tendinitis and impingement syndrome. The narrative noted appellant's work duties and described her physical condition and symptoms. The work report prepared by Dr. Smith indicated appellant was released to restricted duty on May 12, 1998, with no lifting of greater than 10 pounds with the right arm; no reaching above shoulder level for the right arm; no repetitive use of the right arm and hourly breaks.

In a letter dated June 6, 1998, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish her claim and requested that she submit such evidence. The Office requested that appellant submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors.

In response to the Office's request, appellant submitted a narrative statement dated June 25, 1998. The statement noted appellant's job duties, which included inputting data into a

computer and calculating information from documentation submitted by taxpayers. She indicated she must utilize manuals and rotate her body in order to retrieve the manuals from overhead cabinets. Appellant noted these duties are performed repetitively for nine hours per day.

On August 24, 1998 the Office issued a decision and denied appellant's claim for compensation under the Federal Employees' Compensation Act.<sup>1</sup> The Office found that the medical evidence was not sufficient to establish that her medical condition was caused by employment factors.

By letter dated December 2, 1998, appellant requested reconsideration of the August 24, 1998 decision of the Office. She submitted additional medical evidence. The medical evidence included medical reports from Dr. Smith dated April 4, 1997 and September 25, 1998; progress notes from September 1994 to February 1998 and an x-ray report of the right shoulder dated January 30, 1998.

By merit decision dated August 18, 1999, the Office denied modification of the prior decision.

The Board finds that appellant has not met her burden of proof in establishing that she developed a right shoulder condition in the performance of duty.

An employee seeking benefits under the Act has the burden of establishing the essential elements of her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that the injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>2</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>4</sup>

In the instant case, it is not disputed that appellant was exposed to repetitive duties in the course of her job. However, she has not submitted sufficient medical evidence to support that a condition has been diagnosed in connection with the employment factor and that any alleged shoulder condition is causally related to the employment factors or conditions. On June 6, 1998 the Office advised appellant of the type of medical evidence needed to establish her claim. Appellant did not submit any medical report from an attending physician addressing how specific employment factors may have caused or aggravated her shoulder condition. The only medical reports submitted by appellant were Dr. Smith's reports dated April 4, 1997 and September 25, 1998, which diagnosed appellant with calcific tendinitis and impingement syndrome of the right shoulder. Dr. Smith's April 4, 1997 report indicated x-ray's were taken revealing calcific tendinitis of the right shoulder. His report of September 25, 1998 provided a diagnosis of impingement syndrome of the right shoulder. Dr. Smith noted appellant underwent excision of the distal right clavicle, partial acromionectomy of the right shoulder in July 1998 which proved to be successful; however, appellant still experienced persistent pain in the right shoulder. In neither of his report's does he address appellant's history of injury or the employment factors believed to have caused or contributed to her right shoulder condition.<sup>5</sup> Additionally, Dr. Smith's reports do not include a rationalized opinion regarding the causal relationship between appellant's right shoulder condition and the factors of employment believed to have caused or contributed to such condition.<sup>6</sup> Therefore, these reports are insufficient to meet appellant's burden of proof.

The remainder of the medical evidence fails to provide an opinion on the causal relationship between appellant's job duties and her diagnosed condition. For this reason, the evidence is not sufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>7</sup> Causal relationships must be established by

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<sup>4</sup> *Id.*

<sup>5</sup> See *Cowan Mullins*, 8 ECAB 155, 158 (1955) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).

<sup>6</sup> See *Theron J. Barham*, 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

<sup>7</sup> See *Victor J. Woodhams*, *supra* note 3.

rationalized medical opinion evidence. Appellant failed to submit such evidence, and the Office therefore properly denied appellant's claim for compensation.<sup>8</sup>

The decision of the Office of Workers' Compensation Programs dated August 18, 1999 is affirmed.

Dated, Washington, DC  
April 10, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member

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<sup>8</sup> With her appeal appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting new evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128(a).